IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL CASE No. 7 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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O.L. OF GEETA FABRICS P.LTD. - Complainant(s)
Versus
PREMJIBHAI JETHABHAI PATEL & 4 - Accused

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Appearance :
OFFICIAL LIQUIDATOR for Complainant(s) : 1,MR.HIREN M MODI for Complainant(s) : 1,
MR BD KARIA for Accused : 1 - 4.
MR VIJAY H PATEL for Accused : 1 - 4.
HL PATEL ADVOCATES for Accused : 1 - 4.
- for Accused : 0.0.0

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 11/12/2007

ORAL JUDGMENT

1. The Official Liquidator has filed this com11plaint under Section 454(5) of the

Companies Act, 1956 praying for the direction to issue process against the accused and also further direction to them to file Statement of Affairs within such period as this Court directs.

2. The Official Liquidator has stated in the complaint that the winding up order was passed by this Court in Company Petition No.8 of 1986 on 28.11.1991 and he was appointed as the Official Liquidator of the Company. By virtue of the provisions of the Section 441(2) of the Companies Act, 1956, the winding up of the Company is deemed to have commenced at the time of presentation of the petition for winding up. He has further stated that after his appointment he had taken inspection of the records maintained by the Registrar of Companies, Gujarat and from the said inspection it was revealed that the accused Nos.1 to 4 have been described as Directors of the Company in liquidation. Subsequently, they have appeared before the Official Liquidator and he had recorded their statement under Rule 130 of the Companies (Court) Rules, 1959. In the said statement under Rule 130 recorded by him the accused had stated that the accused were the Directors as on the date of liquidation of

the Company. They were, therefore, under statutory obligation to furnish the Statement of Affairs, which is required under Section 454 of the Companies Act, 1956. Still Statement of Affairs was not filed and hence the complaint was filed before this Court under section 454(5) of the Act.

3. Initially Mr. Vijay H. Patel, learned advocate appeared on behalf of the accused Nos.1 to 4. This Court has passed an order on 7.9.1998. An affidavit was filed by accused No.1 on 17.12.1996 stating that for filing the Statement of Affairs, the accused are required to peruse the records, which are in custody of the CBI, as records of the Company were seized by the CBI on 31.1.1986. On the basis of this affidavit, this Court has passed an order on 7.9.1998 permitting the accused to request CBI to permit the Chartered Accountant of the accused to inspect the books of accounts for the purpose of preparing the statement of affairs. Thereafter, by virtue of an order dated 22.6.2006, Central Bureau of Investigation, Gandhinagar was joined as party respondent in the complaint and notice was issued on the CBI. Further order was passed by this Court on 23.11.2006 and it was observed therein

that the inspection taken by the accused Nos.1 to 4 from the record of the CBI was not sufficient. Thereafter, direction was sought for from this Court to direct CBI to permit their Chartered Accountant to take further inspection and accordingly the said permission was granted. On 21.2.2007 this Court has further ordered that the inspection was completed and the statement of affairs was filed before the Official Liquidator. However, the statement of affairs filed was defective and for compliance of such defect, letter was addressed by the Official Liquidator to the accused persons.

4. The Official Liquidator in his letter dated 13.2.2007 has stated that the accused have not furnished any information or details in the statement of affairs except book values of plant and machineries, dues of the secured creditors and unsecured creditors and paid up capital of the Company. The details of bank balance, cash in hand, marketable securities, trade debtors, loans and advances, stock in trade, work in progress are not furnished. The details of assets with their description and location realisable value thereof are not furnished. Even descriptive details of plant and

machineries which are shown to be of the market value of Rs.20 lacs, are not furnished. The details of debtors are not furnished. No details are furnished in respect of fixed assets of Rs.97,38,102/-, inventories of Rs.56,46,026/- and sundry debtors of Rs.1,66,62,640/- cash and bank balance of Rs.1,43,754/- and loan and advances of Rs.12,62,395/-. The Official Liquidator has also observed in the said letter that the accused have filed formal statement of affairs and no substantial compliance of the requirements of law was made. The accused were, therefore, directed to file complete statement of affairs as per Section 454 of Companies Act, 1956 read with Form No.57 and Rule 127 of the Companies (Court) Rules, 1959.

5. In response to the said letter, accused No.1 has given detailed reply dated 13.3.2007 to the Official Liquidator wherein it is pointed out that the Company in liquidation is not in existence since 1986. Therefore, they had to wait for all these years to take inspection of the records from the books of accounts seized by CBI, and, on the directions issued by this Court they could take inspection of the records in the custody

of CBI at Gandhinagar. On the basis of record and documents gathered by the Chartered Accountant, the statement of affairs was prepared and filed on 9.2.2007. It is further stated that except the estimated value of the plant and machinery, no other details are available on the records which are in custody of CBI, and, therefore, value of plant and machinery is only shown in the statement of affairs. It is further stated that no further details of any secured or unsecured creditors of the company in liquidation except stated in the statement of affairs, are available with them as on the date of filing of statement of affairs. It is further stated that further details like bank balance, cash in hand, marketable securities, trade debtors, loans and advances, stock-in-trade, work in progress etc, are not available and, therefore, the same are not furnished, because the company was not in existence as on the date of passing of the winding up order i.e. 28.10.1991 and hence no details were available in the records seized by the CBI. It is further stated that the details of assets are not available as the same are sold by the Official Liquidator for Rs.20 lacs approximately as shown in the statement of

affairs. The details of unsecured creditors are also given as per the list 'E' in the statement of affairs. It is further stated that the details referred to in the Official Liquidator's letter pertain to rough balance sheet as on 30.9.1983 and, therefore, these details are not relevant for the purpose of preparation of statement of affairs as on the date of winding up order i.e. 28.10.1991. The details, therefore, referred to by the Official Liquidator are not reflected in the statement of affairs. It was reiterated by the accused in the said reply that the statement of affairs filed on 9.2.2007 is correct, complete, descriptive and is as per the requirement under Section 454 of Companies Act and Companies (Court) Rules, 1959, as no other and further details are available with the Directors of the Company. They have also shown their readiness and willingness in the matter to provide all other information required which are available with them.

6. Even after above compliance is made by the accused, the Official Liquidator has written further letter on 20.3.2007 and reply to the said letter was given by the accused on 23.3.2007 reiterating all the contentions,

which were raised in the earlier communication.

7. In the above background of the matter, this Criminal Case is taken up for hearing. Mr. Hiren Modi, learned advocate appearing for the Official Liquidator submitted that certain compliance has not been made and defects, which were pointed out by the Official Liquidator have not been completely cured. He has, therefore, submitted that unless and until these defects are cured or removed the accused persons cannot be discharged or the complaint against them cannot be put to an end.

8. Mr. B.D. Karia, learned advocate appearing for the accused Nos.1 to 4 has submitted that the Company was closed since 1986 and winding up order was passed in 1991. Since 1983 onward books of account were in the custody of the CBI and it is only by virtue of order passed by this Court in 2006 the accused could take inspection and based on the information received, statement of affairs was filed. He has, therefore, submitted that the accused have done their best to comply with the requirements contained in Section 484 of the Act and, therefore, there was no

willful disobedience on their part to comply with the directions. He has further submitted that there is no reason to hold the accused persons guilty within the meaning of Section 545 of the Companies Act, 1956. He has specifically invited the attention of the Court to the statement of affairs filed and alongwith the statement of affairs affidavit of concurrence with statement of affairs wherein it is stated that the books of account of the Company were in the custody of CBI since 31.1.1983. Thereafter, it was requested to the CBI to give inspection of the record containing books of account of the company in order to prepare the statement of affairs in accordance with the provisions of the Companies Act. This Court has also passed an order directing the CBI to give inspection of the record. After order of this Court, inspection was given by CBI on 11.9.2006, 18.9.2006 and 19.9.2006. On the basis of details and informations received from the record and books of account in the custody of the CBI, the statement of affairs was prepared. The delay in filing the statement of affairs has, thus, occurred due to the above reasons and hence the delay is required to be condoned. He has also pointed out that out of 4 accused, 2 accused, namely,

Premjibhai Jethabhai Patel and Jethabhai Punjabhai Patel have resigned as Director of the Company with effect from 1.10.1996. Necessary Forms were also filed with the Registrar of company on 4.10.1996. Therefore, as on the date of winding up order, they were not Directors of the company. In any case since they were not Directors, the statement of affairs was signed by the two Directors, namely, Jitendrabhai Jethabhai Patel and Kamlesh Jethabhai Patel.

9. In the above view of the matter, a lenient view is required to be taken in the matter and since the complaint is of 1992 and more than 15 years have passed and substantial compliance has been made by the accused, the accused may either be exonerated or token fine be imposed and criminal complaint be put to an end.

10. After having heard learned advocates for the respective parties and after having gone through the complaint, affidavit, statement of affairs and subsequent communications exchanged between the Official Liquidator as well as the accused and considering the relevant statutory provisions and the rules,

the Court is of the view that there is no question of sentence in the present case, as the sufficient compliance has already been made.

11. This however does not mean that the accused persons are allowed to go completely scot-free. Even as per the say of the accused persons, the statement of affairs was filed in February, 2007 i.e. after a period of 15 years from the date of winding up order. Section 454 (3) of the Companies Act, 1956 casts an obligation on the persons mentioned in Section 454 (2) to submit a statement of affairs within 21 days from the relevant date or even such extended time not exceeding three months from the date as the Official Liquidator or the Court may, for special reasons, appoint. Sub-section (8) of Section 454 states that the expression, 'the relevant date' means in a case where a provisional Liquidator is appointed, the date of his appointment and in a case where no such appointment is made, the date of the winding up order. The Official Liquidator has proceeded all throughout on the footing that the accused persons have committed default in filing statement of affairs within 21 days from the date of winding up order i.e.

28.11.1991. In the notice issued by the Official Liquidator as well as in the complaint, he has mentioned the said date for the purpose of counting the period of default. It is, therefore, believed that the accused persons have committed default in filing statement of affairs at least for the period of about 15 years. It is true that sub-Section (5) of Section 454 makes a provision for penalty and sentence which states that if any person, without reasonable excuse, makes default in complying with any of the requirements of this section, he shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to Rs.1,000/- per every day during which the default continues, or with both. Since the Court has come to the conclusion that this is not a case where a view can be taken that the default was committed without reasonable excuse. Hence, there is no question of awarding any sentence. Even when the Court is satisfied that there is a reasonable excuse, the Court takes a lenient view while awarding the fine. The Court, therefore, holds that interest of justice would better be served if the accused Nos.1 and 2, who have already retired before the winding up order, are punished with fine

of Rs.2500/-each and accused Nos. 3 & 4 are punished with fine of Rs. 5,000/- each for late filing of the statement of affairs. Accordingly, accused Nos.1 and 2 are punished with fine of Rs.2500/- each and accused Nos. 3 & 4 are punished with fine of Rs.5,000/- each. The amount of fine shall be deposited within 30 days from today with the Official Liquidator.

12. Subject to the aforesaid finding and observation, this complaint is accordingly disposed off.

(K. A. PUJ, J.)

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